Supreme Court, U. S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1466

BOSTON HOME AND SCHOOL ASSOCIATION,
PETITIONER,

*v.*

TALLULAH MORGAN, et al.,
JOHN J. KERRIGAN, et al.,
RESPONDENTS.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

## PETITION FOR REHEARING

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## PETITION FOR REHEARING

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The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on June 14, 1976, and (2) granting the petition. As grounds for this motion, petitioner states the following:

I. The Decision in *Pasadena City Board of Education, et al.* v. *Spangler, et al.*, No. 164, October Term, 1975.

On June 28, 1976, following the denial of certiorari in the instant case, this Court handed down its decision in *Pasadena City Board of Education, et al.* v. *Spangler, et al.*, which recognized the limits "beyond which a court may not go in seeking to dismantle a dual school system." 44 L.W. at 5117. The Court said that "These limits are in part tied to the necessity of establishing that school authorities have in some manner caused unconstitutional segregation", and went on to prohibit continual reassignments of pupils to schools where there was "no showing in this case that those post-1971 changes in the racial mix of some Pasadena schools . . . were in any manner caused by segregative actions chargeable to defendants", but were rather attributable to a "quite normal pattern of human migration [which] resulted in some changes in the demographics of Pasadena's residential patterns, with resultant shifts in the racial makeup of some schools." *Ibid.* The Court concluded that the scope of the remedy should not extend to racially balancing such schools, "as these shifts were not attributed to any segregative action on the part of defendants". *Ibid.*

The Court's holding is on all fours with the petitioner's contention that the District Court's order in Boston should not have reassigned pupils to require racial balancing in the approximately 110 Boston schools in which the racial imbalance could similarly be shown to have been the result, in the first instance, of "quite normal patterns of human migration [which caused] changes in the demographics of [Boston's] residential patterns", (see petitioner's offer of proof outlined at pp. 9-11 of the petition, and attached maps, Exhibits C - F), but should rather have been limited to the approximately 50 particular schools



in which the racial imbalance was found to have been caused, in whole or in part, by School Committee action.

In *Pasadena*, this Court also decided that the School Board's continuing failure to fully desegregate teacher and administrator hiring and promotion did not warrant a continuing duty to require racial balancing in every school. This holding is identical to the petitioner's contention that the District Judge's sweeping mandatory injunction (which had as its goal the racial balancing of every Boston public school) was not warranted by that Court's previous finding of a dual school system, where the only segregatory effect of School Committee action found to have affected about 110 out of Boston's 160 schools related to discriminatory teacher and administrator assignments, rather than to any School Committee action causing racial imbalance (petitioner's reply brief, p. 5).[1]

We can conceive of no reason why the same guidelines and logic that the Court has now specified regarding the proper scope of a remedial decree after a mandatory injunction has once been issued, should not also be applicable to determine the proper scope of a mandatory injunction in the first instance.

II. The Justice Department's Involvement

. We feel that the highly publicized reversal by the Justice Department of its original decision to request this Court to grant our petition has unwittingly caused us prejudice. The primary reason for the reversal appears to have been the Attorney General's concern that the

[1] There we pointed out that "We do not dispute the District Court's findings that, in some manner, the violation affected every school. Indeed, the Court's findings on discriminatory teacher assignments alone make this clear. From this it should not automatically follow that the remedy must require the racial balancing of every school."

neighborhoods and an infringement on their personal liberties (see separate Appendix, pp. 6, 8, 11, and 12) have peacefully obeyed the law and looked to the courts for redress of their grievances. We submit it is manifestly unfair to deprive these citizens and the nation of their day in court before the country's highest tribunal, simply because a relatively few citizens have behaved in an illegal, irresponsible, and despicable manner.

## Conclusion

If this Court has read our submissions and reads the Committee report published as a separate Appendix hereto, it cannot be ignorant of the agony of Boston. The denial of certiorari can only be interpreted to mean either this Court is insensitive to that agony, or feels incapable of devising any better remedial guidelines. We find it difficult to accept either alternative.

For the reasons set forth above, as well as those contained in its petition for writ of certiorari and reply brief, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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